Albert R. Allgaier
#183653
Mound Correctional Facility
17601 Mound Road
Detroit, Michigan 48212

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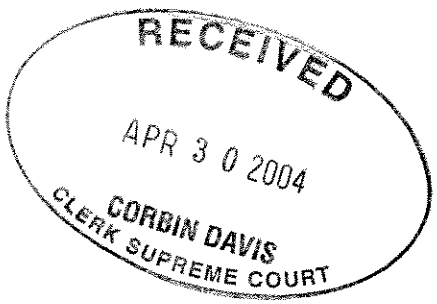
Michigan Supreme Court
Clerk's Office
P.O. Box 30052
Lansing, MI 48909



RE: Proposed Amendments to court rules
Supreme Court ADM File No. 2003-04

Dear Justices:

I am writing to oppose certain portions of the proposed amendments to the court rules.

A. Proposed Amendment to **MCR 6.610(F).**

As I understand this proposal, this proposal does not include in it's list of material to be turned over, such as police reports and witness statements. This proposal would allow a prosecutor to conceal police reports and witness statements relevant to a trial. This would cause a great manifest injustice. I personally can relate to this problem. The crime that I was charged with, and am currently serving, was never reported until one year after the alleged crime was to have taken place. All investigations of the alleged crime was done at the prosecutor's office. All witnesses, were interviewed by the prosecutor at the prosecutor office. Before trial, the prosecutor never turned over any witness statements, and the police report that was turned over, was a basic **MCL** of the charges that I was to have allegedly committed. Before trial, the prosecutor requested and the court granted the use of prior and subsequent bad acts **(MRE 404(b)**, that were allegedly committed by me. Some of these bad acts were never reported, but told for the first time at the prosecutor's office when the complainant also disclosed the crime that I was to stand trail for. At trial, it was very hard for my attorney to show that these statements were unworthy of belief, because "the statements" were being exposed for the first time at trial. Once the prosecutor learned of the defense during opening statements, the prosecutor just filled in the times and places with the bad acts to support the crime charge. It was impossible to refute something that is being told for the first time at trial. Under **People v Holtzman, 234 Mich App 166, 176, & 190 (1999)**, the only way a prosecutor would have to turn these statements over would be if the witness adopted these notes and statements while/for their testimony. As was said in **U.S. v Hayes**, how can a defendant rebut evidence he has never seen in order to establish that he was prejudiced by the Circuit Court's reliance on that evidence. **Hayes, 171 F3d 389, 394 (6th Cir. 1999).** The way I read this proposal, the prosecutor would have the prior statements, and can use them as he pleases, while the defense is denied all access

to this critical information. Even though in Davis v Alaska dealt with confidential information; it was that defendant was denied the right "to expose to the jury the facts from which jurors ... could appropriate draw inference relating to the reliability of the witness." 415 U.S., at 318, 94 S.Ct. at 1111. Pennsylvania v Ritchie, 107 S.Ct. 989, 1000 (1997). By allowing a prosecutor to do just that, "not turn over", police reports or witness statements, the jury would never be able to appropriately draw the inference relating to the reliability of a witness, such as perjury testimony. Justice should not be treated as a game of hid the evidence. The prosecutor should not be allowed to withhold evidence relevant to not only to defendant's defense, such as impeachment evidence and a showing of ulterior motives to fabricate facts, whether the prosecutor perceived the evidence as exculpatory, or not statements and police reports should automatically be turned over whether requested or not.

B. Proposed Amendment to MCR 6.502(C).

If you limit the motion and briefs to 25 pages, then you are guaranteeing that in many cases all the issues cannot be properly raised.

When Congress passed the AEDPA in 1996, affecting Federal Habeas Corpus, and enacting a one year limit in 28 USC § 2244, the federal courts incorporated into that law, that where a state prisoner has not first presented his federal claim to the state courts, and exhausted all state courts remedies available, federal courts will not review a habeas corpus petition. See Rust v Zent, 17 F3d 155, 169 (CA6, 1994). Allegations of prosecutor misconduct must be considered in light of the entire record. See, e.g. Lundy v Campbell, 888 F2d 467, 472 (6th Cir. 1989) (observing that the entire record "refers to all that occurred from the empanelment of the jury to the return of the verdict"; Bean v Foltz, 832 F2d 1401, 1408 (6th Cir. 1987) Jamison v Collins, 100 F.Supp.2d 647, 711 (S.D. Ohio 2000). Even though the proposal would be eliminating the requirement of a defendant to show "cause", a defendant would still have to show that his substantial rights were materially being affected, which resulted in a miscarriage of justice. MCLA § 769.26; MSA § 28.1096. See also People v Jones, 236 MA 396, 600 NW2d 652 (1999), and People v Osborne, 75 MA 600, 256 NW2d 45 (1977); defendant must show a miscarriage of justice to prevail on unpreserved claims of error. People v Carines, 460 Mich 750, 597 NW2d 130, (1999). The only way that a defendant would properly do this, would be to show the prejudice by the error. Even though the proposal would eliminate a defendant to show "cause", a defendant to properly show "prejudice", defendant would have to show what "caused" this prejudice that resulted in a miscarriage of justice. With the 25 page limit, issues such as prosecutor misconduct, the court's will not review, unless it was objected to. When a prosecutor engages in this kind of misconduct, a defendant has to show and present this by presenting "the entire record", such as opening statements, and it may carry over to the closing arguments, such as where a prosecutor may not argue facts in evidence, or misstating of facts in the evidence, when this takes place, to properly raise this issue, quotes from the records may take up many pages in the brief. The prosecutor further may have used this same evidence in her questions to the jury during voir dire. With this in mind, this one issue argument alone may well be many pages long. AEDPA requires that we bring out and exhaust all state violations and how our federal rights were violated, this requires us to add not only the state law but show by federal law how our Federal

Consistutional rights might have been violated. For a defendant to get a full and fair hearing on the issues presented, he has to show how he was prejudice by this error. To do this, a defendant would still have to raise the issue as, attorney's failure to object to the prosecutor misconduct. Without showing what caused the prejudice [attorney's failure to object], the Court's will not review because they will state, attorney's failure to object to this unpreserved error, such as prosecutor misconduct will not result in a miscarriage of justice to review. So even though it looks like this proposal is doing defendant's a favor by limiting the cause requirement, in exchange of this defendant's would not have to show cause, but only allowing us 25 pages to do our briefs, in reality its just another way of the court's denying us due process of the law. A through reading of this in the Black law Dictionary is just that "fundamental fairness". These proposal are just that "another way do take away some of fundamental rights that were slowing losing not to just prisoners, but to all americans.

I appreciate the Court's process for allowing public comment on the proposals, I hope this includes prisoner also. Our opinions are not always right, but hopefully someone is listening.

Sincerely,

Albert R. Allgaier

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